

## **REMARKS**

Reconsideration and withdrawal of the rejections of this application and consideration and entry of this paper are respectfully requested in view of the herein remarks, which place the application in condition for allowance.

### **I. STATUS OF CLAIMS AND FORMAL MATTERS**

Claims 2-4, 6-9 and 11-18 are now pending in this application. Claims 12 and 13 have been amended to correct minor typographical errors. New claims 14-18 have been added to encompass narrower embodiments of the invention represented by claim 11. Claim 14 lists the herbicides (A) and (B) used in the Examples and claim 15 lists the combinations used in the examples. Claim 16-18 lists herbicides (B) which are phenoxypropionic-type herbicides of which (B1.3.3) is a specific type of phenoxypropionic-type herbicide. No new matter has been added.

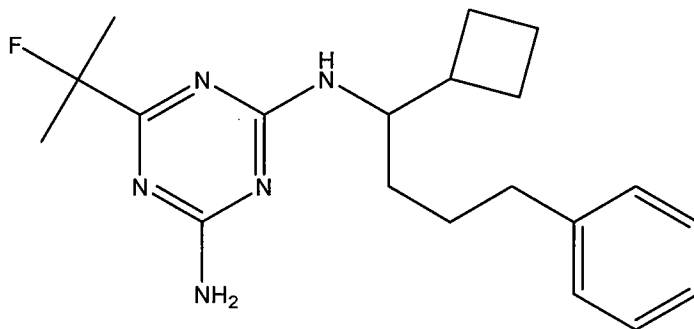
It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

### **II. NO RESTRICTION WAS MAILED FOR THE CONTINUATION APPLICATION**

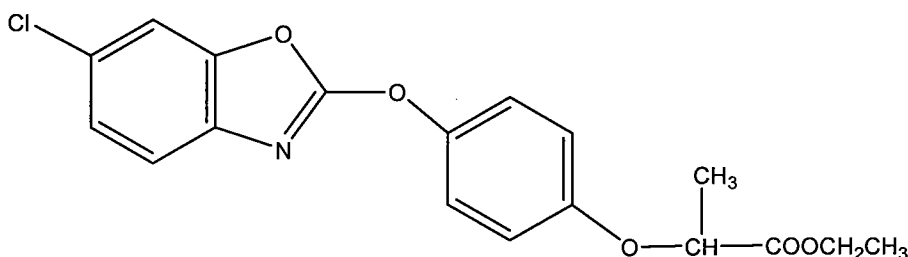
The applicants note that this application was filed as a continuation (CON) application **NOT** a request for continued examination (RCE). As such, this application is a “new” application and the restriction/election of species from the parent application ***DOES NOT automatically apply to the continuation application***, see MPEP 201.07 - “At any time before the patenting or abandonment of or termination of proceedings on his or her earlier nonprovisional application, an applicant may have recourse to filing a continuation in order to introduce into the application a new set of claims and to establish a right to further examination by the primary examiner.”, i.e. there is no restriction of record ***for this continuation application***.

There was no indication by the applicants to continue examination based on the election of species A2 and B1.3.3 and as such the Examiner’s office action only addressed the combination of A2 and B1.3.3 when, in the absence of a restriction requirement, the entire scope of the applicants’ pending claims is currently open for examination..

In the interest of expediting prosecution, it is not necessary for the Examiner to mail a separate restriction requirement. However, the applicants do request that a new Office Action on the merits be mailed which repeats the restriction requirement from the parent application and accepts the applicants' election of the following species below:



(A1) 4-amino-6-(1-fluoro-1-methylethyl)-2-(3-phenyl-1-cyclobutylamino)-1,3,5-triazine



Fenoxaprop-P-ethyl (part of B1.3.3).

This election is made WITH TRAVERSE.

### **III. THE 35 U.S.C. 112, 2<sup>nd</sup> PARAGRAPH REJECTIONS HAVE BEEN OVERCOME**

Claims 12 and 13 have been amended to correct minor typographical errors to the claim.

### **IV. THE 35 U.S.C. 103 REJECTION HAS BEEN OVERCOME**

Claims 2-4, 6-9 and 11-13 were rejected as being obvious over the combined teachings of Giencke et al. (U.S. Patent 6,239,071 - "Giencke"), Zindel et al. (WO 98/34925 - "Zindel"); Hirata et al. (A: EP 467 204; B: EP 469 406; C: EP 471 221; D: EP 471 284), Takematsu (Abstract of JP 04095003); Hirata et al. (A: Abstract of JP 7267804; B: Abstract of JP 7267805).

The applicants do not concede that the claims were obvious for the election of A2 and B1.3.3, however, these rejections have been rendered moot by the new election made above.

While the applicants believe the claims are allowable on their face, the Examiner's attention is directed towards Examples 9-22 (pages 73-86) in the specification which provides evidence of unexpected results for compositions with A1 and Examples 11 and 21 show unexpected results for the use of A1 and B1.3.3.

In the event that no restriction is applied toward the applicants' claims and the full scope of the applicants claims remains under examination, then the applicants must address the rejection of the combination of A2 and B1.3.3. The applicants request reconsideration of this rejection as follows.

US 6,239,071 (Giencke et al.) teaches novel 2,4-diamino-triazines N-substituted by phenylalkyl moieties. Giencke et al. also generically teach that the novel compounds can be combined with other herbicides. Specific combinations of 2,4-diamino-triazines and other herbicides are not disclosed. Therefore, the claimed combinations according to the present invention are not rendered obvious by Giencke et al.

Additionally, considerations of obviousness must also account for evidence of secondary considerations, e.g. evidence of unexpected results, which as noted above, has been provided in the applicants specification. Giencke et al. do not teach synergistic effects of herbicide combinations. Whenever combinations of herbicides are contemplated it is just said generic teaching that specific compounds of formula (I) (aminotriazines) may be combined with known herbicides for broadening of weed control. A person skilled in the art thus would expect to get at best the additive effect of the single active ingredients if a combination were applied. The reference thus fails to teach that synergistic effects are obtained for said herbicidal combinations. Insofar it is accepted that synergistic effects are obtained for the compounds of the class of 2,4-diamino-triazines defined in the present application and the combination partners selected in the present application, the invention is unobvious and patentable.

The reference WO 98/34925 (Hoechst) likewise fails to teach or disclose synergistic effects of herbicidal combinations. The reference is substantially directed to novel herbicidal active ingredients and their use. The arguments set forth above regarding Giencke et al. applies here, too.

EP 0467204 (Hirata et al.) is directed to synergistic herbicidal compositions of specific 2,4-diamino-triazines and specific partner herbicides selected from the group of urea herbicides. These combinations are not within the scope of the present claim 1.1 (main claim). The reference

also does not render obvious the present invention because the reference does not teach other 2,4-diamino-triazines or other combination partners which combinations would fall within the scope of present claim 11.

EP 0469406 (Hirata et al.) is directed to synergistic herbicidal compositions of specific 2,4-diamino-triazines and specific partner herbicides selected from the group of herbicidal pyridinecarboxylic acid or pyridine-oxymethylcarboxylic acid derivatives. These combinations are not within the scope of the present claim 11 (main claim). The reference also does not render obvious the present invention because the reference does not teach other 2,4-diamino-triazines or other combination partners which combinations would fall within the scope of present claim 11.

EP 0471221 (Hirata et al.) is directed to synergistic herbicidal compositions of specific 2,4-diamino-triazines and specific partner herbicides selected from the group of herbicidal thiocarbamates. These combinations are not within the scope of the present claim 11 (main claim). The reference also does not render obvious the present invention because the reference does not teach other 2,4-diamino-triazines or other combination partners which combinations would fall within the scope of present claim 11.

EP 0471284 (Hirata et al.) is directed to synergistic herbicidal compositions of specific 2,4-diamino-triazines and specific partner herbicides selected from the group of sulfonylurea herbicides. These combinations are not within the scope of the present claim 11 (main claim). The reference also does not render obvious the present invention because the reference does not teach other 2,4-diamino-triazines or other combination partners which combinations would fall within the scope of present claim 11.

JP 04095003 (Takematsu) is directed to synergistic herbicidal compositions of specific 2,4-diamino-triazines and specific partner herbicides selected from the group of herbicidal dinitroanilines. These combinations are not within the scope of the present claim 11 (main claim). The reference also does not render obvious the present invention because the reference does not teach other 2,4-daimio-triazines or other combination partners which combinations would fall within the scope of present claim 11.

JP 7267804 (Idemitsu) is directed to synergistic herbicidal compositions of specific 2,4-diamino-triazines and specific partner herbicides selected from the group of prodiamine, dithiopyr, halosulfuron, triclopyr, napropamide, bensulide, prpyzamide, flazasulfuron, imazosulfuron and imazaquin. These combinations are not within the scope of the present claim

11 (main claim). The reference also does not render obvious the present invention because the reference does not teach other 2,4-diamino-triazines or other combination partners which combinations would fall within the scope of present claim 11.

JP 7267805 (Idemitsu) is directed to synergistic herbicidal compositions of specific 2,4-diamino-triazines and specific partner herbicides selected from the group of prazosulfuron-ethyl, MCPP, pendimethalin, besulodine (= bensulide) and simazine. These combinations are not within the scope of the present claim 11 (main claim). The reference also does not render obvious the present invention because the reference does not teach other 2,4-diamino-triazines or other combination partners which combinations would fall within the scope of present claim 11.

In view of the above differences between the applicants' claimed invention and the references cited by the Examiner, the conclusion that:

*"...merely amending the claims to "proviso out" the specific combinations discussed in the prior art does not negate the teaching that it was known to combine the subject herbicidal compounds with any known herbicide. Further, in view of the teachings concerning synergy, it would appear that merely demonstrating synergistic results, as taught in the prior art, would be insufficient for overcoming the rejections."*

is incorrect in light of the absence of any directed to select the appropriate combinations taught by the applicants and the evidence of unexpected results produced by the applicants. The references do not teach that it was known to combine the 2,4-diamino-triazines with any known herbicide and thereby producing synergistic results, nor does the prior art teach the selected combinations according to the present application which provide valuable synergistic herbicidal properties.

Regardless of whether the herbicide (A) was (A1) or (A2), the applicants dispute the Examiner's assertion that there was no test data. Pages 73-86 show ample test data which support the applicants' claim of unexpected results.

While it is true that the combination in table 11 was tested in the presence of safener mefenpyr-diethyl or in the table 21 in the presence of safener isoxadifen-ethyl this fact does not change the situation. The safener is added to safen the crop from phytotoxic effects of the herbicides. The safener is not a herbicide. The synergy of herbicidal effect of the combination on

the weeds is proof of the synergy of the two herbicidal active ingredients combined and not just of the two herbicidal active ingredients in combination with a safener.

Therefore, the herbicidal effect and the synergy is due to the herbicidal active ingredients combined. The safener is just and additive, not comparable with another herbicidal active ingredient.

The synergistic effect on the weeds would also be obtained if the safener were not present at all. The independent effect is also demonstrated by the synergy obtained with the two different safeners in tables 11 and 21. The herbicidal effect on the weeds thus supports the inventiveness of the herbicide combination A1 + B1.3.3 which is the elected species if the Examiner chooses to reintroduce the original restriction requirement or for A2 + B1.3.3 if no restriction is applied to this application.

For any of the above reasons, the applicants' claims are not obvious in view of the references cited.

**CONCLUSION**

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,  
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